

AS PROPOSED by PLANNING BOARD

TIVERTON ZONING ORDINANCE

ARTICLE XIV. NONCONFORMING DEVELOPMENT

(Rewritten in its entirety without strike-throughs or italics for additions)

General

Within the Zoning Districts established by this Zoning Ordinance or by any amendments thereto, there exist or may exist uses, structures or lots which were lawful before this Zoning Ordinance was adopted or amended, but which have become nonconforming under the provisions of this Zoning Ordinance or by amendment thereto. Such uses, structures and lots are nonconformances. It is the intent of this Article to permit these nonconformances to continue until they are removed, abandoned or changed to a conforming use.

Section 1. Definitions.

For the purposes of this Article, the following definitions shall apply:

a. Nonconformance

A nonconformance is a building, structure, sign, or parcel of land, or use thereof, which was lawfully established at the time of the adoption or amendment of this Zoning Ordinance, and not in conformity with the provisions of such ordinance or amendment.

b. Lawfully Established

A building, structure, sign, or parcel of land, or use thereof, was lawfully established if it were in existence prior to the effective date of this Ordinance, or were established in conformance with the Zoning Ordinance in effect at that time. For the purposes of this Ordinance, the placement or use of a sign, with or without any other structure or use, is considered a use of land. (See Section 1.c. below.) A lot was lawfully established if it were shown on a deed or recorded plat prior to the initial effective date of this Ordinance, or is shown on a legally recorded plat or deed that conformed to requirements in effect at the time of the recording. Any building, structure, sign, or parcel of land, or use thereof, that was not lawfully established at the time of the adoption or amendment of this Zoning Ordinance, is not protected by this Article.

c. Nonconforming By Use

Any use of land or of a structure which was lawfully in existence at the time of the adoption of this Ordinance or any amendments thereto shall be nonconforming by use, notwithstanding that such a use is not permitted by the district regulations of this Ordinance, or any amendments thereto, for the Zoning District in which such use is located. A lawfully existing use, which is permitted by special use permit, but which has never received such special use permit, shall also be nonconforming by use. A building or structure containing more dwelling units than are permitted by the use regulations of this Ordinance shall be nonconforming by use.

AS PROPOSED by PLANNING BOARD**d. Nonconforming By Dimension**

A building, structure, or parcel of land not in compliance with the dimensional regulations of this Ordinance shall be nonconforming by dimension. Dimensional regulations include all regulations of this Ordinance, other than those pertaining to the permitted uses. A building or structure containing a permitted number of dwelling units by the use regulations of this Ordinance, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension. Specific entities nonconforming by dimension include, but are not limited to:

- (1) Nonconforming Structure - Any structure which was lawfully in existence at the time of the adoption of this Ordinance or any amendments thereto, but which does not comply with the dimensional regulations or the supplementary regulations or any other regulations concerning structures set forth in this Ordinance or any amendment thereto for the Zoning District in which such structure is located.
- (2) Nonconforming Lot of Record - A lot of record which, when recorded, was in full compliance with the Zoning Ordinance in effect at the time of recording or which was legally recorded prior to the effective date of this Ordinance, and which cannot conform to the area and dimensional regulations of this Ordinance. See Article VII, Substandard Lots of Record, of this Ordinance.

e. Use by Variance or Special Use Permit

A nonconforming building, structure, sign, or parcel of land or the use thereof, which exists by virtue of having received a variance or a special use permit granted by the Zoning Board, shall not be considered a nonconformance for the purposes of this Article, and shall not acquire any rights under this Article. Rather, such building, structure, sign, parcel of land or use thereof, shall be considered a use by variance or a use by special use permit. Any moving, relocation, addition, enlargement, expansion, intensification or change of such building, structure, sign, parcel of land or use thereof, to any use other than a use by variance or special use permit or which is in complete conformance with this Ordinance, shall require a further variance or special use permit from the Zoning Board.

Section 2. Most restrictive regulations to apply.

A building, structure or parcel of land nonconforming by more than one factor, such as by use, dimension, area or parking, shall comply with all applicable regulations of this Article. Where the regulations conflict, the most restrictive regulations shall apply.

Section 3. Building, structure or land nonconforming by use.**a. Continuance of Use**

Nothing in this Zoning Ordinance shall prevent or be construed to prevent the continuance of a nonconforming use of any building, structure or land for any purpose to which such building, structure or land was lawfully established.

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b. Maintenance and Repair

A building or structure containing a nonconforming use may be maintained and repaired except as otherwise provided in this Article.

c. Moving or Relocation

A nonconforming use shall not be moved in whole or in part to any portion of the land other than that occupied by such use at the time of adoption of this Zoning Ordinance unless granted a special use permit by the Zoning Board.

d. Addition and Enlargement

A building or structure containing a nonconforming use shall not be added to or enlarged in any manner, including any addition or enlargement of floor area or volume, unless the use contained within such building or structure, including such addition and enlargement, is made to conform to the use regulations of the Zoning District in which it is located, provided however that limited addition or enlargement may be granted by the Zoning Board as a special use pursuant to Section 4. below.

e. Expansion

A nonconforming use may occupy any parts of a structure that were designed for such use at the time of the adoption of this Zoning Ordinance. A nonconforming use may expand in other ways only if granted a special use permit by the Zoning Board under the provisions of Section 4. below.

f. Intensification

A nonconforming use of a building, structure or land shall not be intensified in any manner, provided, however, that limited intensification may be granted by the Zoning Board as a special use pursuant to Section 4. below. Intensification shall include, but not be limited to, increasing hours of operation, increasing the number of dwelling units, decreasing the lot area, or increasing the seating capacity of a place of assembly. However, this Section shall not prohibit the reconfiguration of lawfully established dwelling units within a building or structure so long as such reconfiguration complies with the requirements of Section 4. below.

g. Change of use

A lawful nonconforming use shall not be changed to another nonconforming use except as permitted under Section 6. below. Once a lawful nonconforming use is changed to a conforming use, it may not be changed back to a nonconforming use.

i. Abandonment

If the lawful nonconforming use of any land, building, structure or sign is abandoned, it shall not be allowed to resume except in conformity with all applicable provisions of this Zoning Ordinance, unless the owner can demonstrate an intent not to abandon the use. Abandonment of a nonconforming use shall consist of some overt act, or failure

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to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use. An involuntary interruption of a nonconforming use, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use.

j. Discontinuance - Presumption of Abandonment

If any nonconforming use is discontinued for a period of one year or more, the owner of the nonconforming use will be presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use. Evidence of discontinuance shall include a change in the use of the building, structure, land or sign to another use; failure to maintain the site, building, structure or sign in habitable, useable or safe condition; or failure to protect said building, structure or sign from the natural elements for a period of one year or more. For the purposes of this section, the intent to abandon a lawful nonconforming use shall also be conclusively presumed by one or more of the following actions:

- (1) Voluntary demolition of the building, structure or sign.
- (2) Failure to apply for or lapse of any permits, licenses or certifications required for continuation of the use, or failure to appeal any denial of any such permit, license or certification within twelve (12) months of any such lapse or denial.
- (3) Removal from the site, building or structure of fixtures, equipment, machinery or inventory necessary for the continuation of the use.

k. Reconstruction

If a nonconforming use is damaged or destroyed by accident or act of God, it may be reconstructed, restored or repaired, provided that such repair or rebuilding shall be commenced within one year of the date of the destruction or damage or by the initiation of the required regulatory process within said year. Once started, such regulatory process and subsequent construction shall be diligently prosecuted until completed, provided that the use, total floor area or land area of use and the location on the site is not altered or increased. Such repair or restoration shall comply in all respects with all applicable codes, ordinances and other applicable regulatory systems. Limited enlargement or addition may be allowed, only if such limited addition or enlargement is granted by the Zoning Board as a special use pursuant to Section 4. below.

Section 4. Special use permit for addition, enlargement, expansion or intensification

a. Nonconforming by use.

- (1) A legal nonconforming use of any parcel of land, within the nonresidential Zoning Districts, shall not be extended beyond that portion of the lot thus used, or otherwise expanded, and a legal nonconforming use of a building, structure, or land may not be added to, enlarged, expanded, or intensified unless a special use permit is granted by the Zoning Board pursuant to the provisions and specific standards set forth in Article XVI, Special Use Permits, of this Zoning Ordinance. Said increased use shall comply

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with all other dimensional and area requirements of this Zoning Ordinance. In granting such special use permits in accordance with Article XVI, the Zoning Board may place such restrictions on such increase, as it may deem necessary to minimize its effect upon neighboring property and uses.

- (2) Within the Residential Zoning Districts, nonconforming uses shall not be intensified, extended, expanded or otherwise enlarged.
- (3) Notwithstanding paragraph (a) above, the expansion of quarrying or mining shall be allowed as described in Section 5. below. The purpose of allowing such expansion is to balance the public purpose of preventing the loss of natural resources, including wildlife habitat, groundwater quality and scenic value, with the legitimate interests of companies that have made a considerable investment in their business.

b. Nonconforming by dimension.

- (1) A structure, which is nonconforming by dimension only shall not be added to or enlarged unless a special use permit is granted by the Zoning Board pursuant to the provisions and specific standards set forth in Article XVI, Special Use Permits, except however, if the requested building expansion is independent of the dimensional nonconformity, and otherwise meets the dimensional and area requirements of the district, said expansion shall be permitted by right.
- (2) A nonconforming building or structure by dimension shall not be moved in whole or in part unless such building or structure is made to conform to all of the regulations of the zoning district in which it is to be located.

Section 5. Expansion of quarrying or mining.

Note: Earth Removal, which includes the removal of sand, gravel and rocks, also is regulated by Chapter 38 Article III of the Town Code.

a. When the nonconforming use is the quarrying of or mining for sand, gravel, rocks or mineral, a horizontal expansion to adjacent areas of the land where such use is located is permitted, provided such expansion is limited to 25 percent of the excavated surface as existing at the time of zoning amendments dated June 4, 2001.

b. At such time no later than three months following the enactment of zoning amendments dated June 4, 2001, the owner of any quarrying or mining operation shall submit a survey of the excavated area to the building official. The survey shall be prepared by a registered land surveyor and show the excavated area as of the date of the zoning amendments, and remain on file in the office of the building official.

c. Expansion of a quarrying or mining use beyond 25 percent of the excavated area as existing on June 4, 2001, may be allowed as a special use permit pursuant to the provisions and specific standards set forth in Article XVI, Special Use Permits.
(Ord. of 6-4-01(9)).

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Section 6. Change of use.

a. A legal nonconforming use may not change to a use that does not conform to the provisions of Article IV, District Use Regulations, of this Zoning Ordinance unless such use is specified within the same subcategory of the same Section of Article IV, e.g. within Section 10 a, but not from Section 10 a to Section 10 b.

b. When a nonconforming use is changed to a conforming use, it may not thereafter be changed back to a nonconforming use.

Section 7. Prior illegal establishment.

Any use or structure illegally established prior to the effective date of this or any previous ordinance or subsequent amendments thereof shall not become legally established or a legal nonconforming use by virtue of such an enactment or subsequent amendment.

Section 8. Signs

Nonconforming signs may be continued and maintained. Nonconforming signs, which are structurally altered, relocated or replaced, shall comply immediately with the provisions of Article XII, Sign Regulations, of this Ordinance. If the structure or use, with which the sign is associated, is enlarged or changed, the sign must comply with Article XII.

Section 9. Parking

A building or structure is considered nonconforming by parking if the lawfully established use of the building or structure does not meet the parking requirements of Article X, Special Provisions.

a. Addition, Enlargement, Expansion and Intensification - A building or structure, or use of land, nonconforming by parking, may be added to, enlarged, expanded or intensified provided that the total parking space supplied meets the requirements of Article X of this Ordinance.

(1) Change of Use - A building or structure nonconforming by parking, may be changed to a different use, pursuant to all other provisions of this Ordinance, provided sufficient parking spaces are supplied to meet the requirements of Article X of this Ordinance.

Section 10. Landscaping

A building or structure is considered nonconforming by landscaping if the lawfully established use of the building or structure does not meet the landscaping requirements of this Ordinance or the Land Development and Subdivision Regulations. No such building or structure shall be enlarged or expanded beyond a total of five hundred (500) square feet of floor area, or the use thereof changed or intensified, unless the landscaping for the entire lot or lots upon which the use is located, is brought into conformance with all of the applicable provisions of Article XX, Development Plan Review, of this Ordinance and the Land Development and Subdivision Regulations.